



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0674; FRL-10596-02-R6]

Oklahoma; Excess Emission and Malfunction Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Oklahoma through the Secretary of Energy & Environment on November 7, 2016. The revision was submitted in response to a finding of substantial inadequacy and SIP call as published by EPA on June 12, 2015, concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that it corrects the inadequacies identified in Oklahoma's SIP in the June 12, 2015 SIP call.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2016-0674. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Regional Haze and SO2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665-6691, *Shar.alan@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our February 3, 2023 (88 FR 7378) proposal. In that document we proposed to approve a revision to the Oklahoma SIP submitted on November 7, 2016, in response to EPA’s national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we proposed to approve the removal of EPA-approved Subchapter 9 Excess Emission and Malfunction Reporting Requirements, sections OAC 252:100-9-1, OAC 252:100-9-2, 252:100-9-3(a) and (b), OAC 252:100-9-4, OAC 252:100-9-5, and OAC 252:100-9-6 from the Oklahoma SIP. We also proposed to determine that the November 7, 2016, SIP revision corrects the substantial inadequacies with the Oklahoma SIP identified in the June 12, 2015 SIP call.

II. Response to Comments

The public comment period for our proposed approval and determination ended on March 6, 2022, and no adverse comments were received. We received one comment supporting removal of sections OAC 252:100-9-1, OAC 252:100-9-2, 252:100-9-3(a) and (b), OAC 252:100-9-4, OAC 252:100-9-5, and OAC 252:100-9-6 from the Oklahoma SIP. Therefore, we are finalizing our approval action as proposed.

III. Impacts on Areas of Indian Country

Section III of our February 3, 2023 (88 FR 7378) proposal discusses in detail the background for EPA's October 1, 2020 approval of Oklahoma's request under the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA) to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by EPA for areas outside of Indian country.¹

As explained below, the EPA is finalizing a revision to the Oklahoma SIP submitted by the State of Oklahoma on November 7, 2016. More specifically, we are approving the removal of OAC 252:100-9-1, OAC 252:100-9-2, OAC 252:100-9-3(a) and (b), OAC 252:100-9-4, OAC 252:100-9-5, and OAC 252:100-9-6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements of the Oklahoma SIP. Consistent with the D.C. Circuit's decision in *ODEQ v. EPA* and with EPA's October 1, 2020 SAFETEA approval, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands.² Because - per the State's request under SAFETEA - EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the SIP will also apply to any Indian allotments or dependent Indian communities

¹ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). The EPA may make further changes to any approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

² As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) Qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively "excluded Indian country lands").

located outside of an Indian reservation over which there has been no demonstration of tribal authority.

IV. Final Action

The EPA is approving a revision to the Oklahoma SIP submitted on November 7, 2016, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of sections OAC 252:100-9-1, OAC 252:100-9-2, 252:100-9-3(a) and (b), OAC 252:100-9-4, OAC 252:100-9-5, and OAC 252:100-9-6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements from the Oklahoma SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that this SIP revision corrects the deficiencies in Oklahoma's SIP identified in the June 12, 2015 SIP call.

V. Environmental Justice Considerations

As stated in the proposal and for informational purposes only, EPA provided additional information regarding this action and potentially impacted populations. EPA reviewed individual demographic data, education level, and percent of people living below the poverty level in Oklahoma and then compared the data to the national average.³ As discussed in the proposal, this action is intended to ensure that all communities and populations across Oklahoma, and downwind areas, including people of color and low-income and indigenous populations overburdened by pollution, receive the full human health and environmental protection provided by the CAA through the removal of director discretion provisions that have interfered with the enforcement structure of the CAA by raising inappropriate impediments to enforcement by states, the EPA, or citizens.

³ Section V, February 3, 2023 (88 FR 7380).

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of Subchapter 9 Excess Emission and Malfunction Reporting in 40 CFR 52.1960, as described in the Final Action above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the Oklahoma SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and incorporation by reference will be removed in the next update to the SIP compilation.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- This approval of a revision to the Oklahoma SIP removing provisions providing discretionary exemptions from excess emission violations as discussed more fully in our proposal will apply to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or

related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA held a virtual consultation meeting with the Muscogee (Creek) Nation of Oklahoma on February 14, 2023, and provided additional information concerning this action.

- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive

impact on the air quality of the affected area by removal of director discretion provisions of the Oklahoma SIP. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 17, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL – Oklahoma

§ 52.1920 [Amended]

2. In §52.1920, the table in paragraph (c) entitled “EPA Approved Oklahoma Regulations” is amended by removing the heading “Subchapter 9 Excess Emission and Malfunction Reporting Requirements” and the entries for 252:100-9-1 through 252:100-9-6.

[FR Doc. 2023-08615 Filed: 4/25/2023 8:45 am; Publication Date: 4/26/2023]